

STEPHANIE YONEKURA  
Acting United States Attorney  
ROBERT E. DUGDALE  
Assistant United States Attorney  
Chief, Criminal Division  
LAWRENCE S. MIDDLETON (Cal. Bar No. 157866)  
MARGARET L. CARTER (Cal. Bar No. 220637)  
Assistant United States Attorneys  
1300 United States Courthouse  
312 North Spring Street  
Los Angeles, California 90012  
Telephone: (213) 894-5010/7413  
Facsimile: (213) 894-6436  
E-mail: lawrence.middleton@usdoj.gov  
maggie.carter@usdoj.gov

Attorneys for Plaintiff  
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BILLY KHOUNTHAVONG,  
BENNY KHOUNTHAVONG, and  
JOHNNY KHOUNTHAVONG,

Defendants.

No. CR 13-904-R

ORDER GRANTING GOVERNMENT'S MOTION  
IN LIMINE TO PRECLUDE EVIDENCE OF  
ALLEGED BANK NEGLIGENCE OR  
COMPLICITY; FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

On January 12, 2015, the court held a status conference in the above named matter. At the status conference, the court heard the government's motion in limine to preclude the admission of any evidence (including through defense cross-examination of government witnesses) and argument (1) alleging negligence on the part of the lenders or blaming the lenders for failing to discover and prevent defendants' scheme to defraud, or (2) that the lending institutions were complicit in defendants' crimes or were aware of the falsity of loan documents defendants submitted. Defendant Billy Khounthavong

1 was present at the hearing and represented by his attorney Dominic  
2 Cantalupo, defendant Benny Khounthavong was present and represented  
3 by attorney Adam H. Braun, and defendant Johnny Khounthavong was  
4 present and represented by attorney Humberto Diaz. Assistant United  
5 States Attorneys Lawrence S. Middleton and Margaret L. Carter  
6 appeared for the government.

7 The court, after carefully considering the pleadings and after  
8 hearing from counsel for defendant Benny Khounthavong, ordered that  
9 the government's motion in limine was granted. The court hereby  
10 makes the following Findings of Fact and Conclusions of Law.

11 Findings of Fact

12 1. Defendants are charged in a ten-count indictment with  
13 multiple counts of loan application fraud, in violation of Title 18,  
14 United States Code, Section 1014, and one count of conspiracy to  
15 commit loan application fraud, in violation of Title 18, United  
16 States Code, Section 371.

17 2. The indictment further alleges that defendants' scheme to  
18 defraud involved the purchase of a residential property in Corona,  
19 California in or about July 2011, and the short sale of a residential  
20 property in Chino, California immediately thereafter, and that, inter  
21 alia:

22 (a) in the loan applications to purchase the Corona  
23 property, defendants either failed to list the Chino Property or  
24 falsely represented that the value of the Chino Property was greater  
25 than the liabilities on the property;

26 (b) defendants submitted two Letters of Explanation to  
27 Flagstar Bank explaining why they were purchasing the Corona Property  
28 when they already owned the Chino Property, one of which stated that

1 the purchase of the Corona home would not create a financial hardship  
2 for them; and

3 (c) in order to obtain approval for the short sale of the  
4 Chino Property, defendants, among other falsehoods, sent the two  
5 lenders a hardship letter stating that they had exhausted all of  
6 their income and resources, when in fact defendants had undisclosed  
7 bank accounts into which they were depositing their salaries as  
8 deputy sheriffs with the Los Angeles County Sheriff's Department.

9 3. On or about November 4, 2014, the government filed a  
10 motion in limine to preclude evidence of alleged bank negligence or  
11 complicity.

12 4. In the motion, the government argued that at trial the  
13 defense may attempt to question the lenders regarding their alleged  
14 negligence in failing to discover and prevent fraud related to the  
15 purchase of the Corona property and/or the short sale of the Chino  
16 property.

17 5. The government further argued that with respect to the  
18 purchase of the Corona property, the defense might also suggest that  
19 the lending financial institutions were complicit in any fraud in  
20 that they were aware, or had reason to believe, that loan  
21 documentation submitted by defendants was false, but nevertheless  
22 approved the loan because they expected to benefit financially.

23 6. The government finally argued that any such negligence  
24 or complicity, even if true, constitutes no defense to the crimes  
25 with which defendants are charged.

26 7. Defendants did not file an opposition to the government's  
27 motion.  
28

Conclusions of Law

1. It is well-settled law that the negligence of the victim in failing to discover a fraudulent scheme is not a defense to criminal conduct. See United States v. Ciccone, 219 F.3d 1078, 1083 (9th Cir. 2000); United States v. Coyle, 63 F.3d 1239, 1244 (3d Cir. 1995).

2. It is equally clear that it is not a defense that the lending institution was complicit in a defendant's fraud. See United States v. Johnson, 585 F.2d 119, 124 (5th Cir. 1978). In the Ninth Circuit, any argument to the contrary is foreclosed by United States v. Kennedy, 564 F.2d 1329 (9th Cir. 1977), where the Court stated:

[defendant] posits that since the bank officer to whom the statement was tendered had determined in advance to authorize the loan, his false statement could not be said to have influenced the action of the bank. However intriguing this argument may be, it has been and must be rejected as being a *non sequitur*. The phrase "for the purpose of influencing" is intended to define the quality of the requisite intent, not to immunize a defendant from criminal liability merely because the bank officer was a party to the scheme.

Kennedy, 564 F.2d at 1340.

3. The focus of the offense of making a false statement to a federally insured financial institution, in violation of 18 U.S.C. § 1014, is on the defendant's intent rather than on the victim. The phrase 'for the purpose of influencing in any way' defines the intent required to accompany a false statement and defines it broadly. It draws under its purview not only a defendant who intends to defraud an unwitting insured institution but also a defendant who intends to cooperate with the institution in a scheme requiring him, with the institution's knowledge, to make false statements for the furtherance

1 of the scheme. The savings and loan's awareness of the fraud is not  
2 relevant, for its existence is not inconsistent with the intent to  
3 influence which a violator of § 1014 must possess. Thus, this  
4 collection of facts labeled 'complicity' is not a defense to a  
5 charged violation of 18 U.S.C. § 1014." Johnson, 585 F.2d at 124  
6 (citations omitted).

7 4. It is irrelevant whether the lenders should have or could  
8 have taken additional steps or required additional information before  
9 funding the loans. It is equally irrelevant that the lender may have  
10 been aware that loan documents submitted by defendants were false.  
11 "[T]he only intent that needs to be shown is the intent to  
12 influence." United States v. Blumenthal, 945 F.2d 280, 283 (9th Cir.  
13 1991) (quoting United States v. Wilcox, 919 F.2d 109, 112 (9th Cir.  
14 1990)). Thus, where false statements are intended to influence a  
15 federally insured financial institution's disbursement of funds, "the  
16 motive behind the statement [is] irrelevant, as [is] the bank  
17 officer's knowledge." Id.

18 Accordingly, the government's motion in limine to preclude  
19 evidence of alleged bank negligence or complicity is HEREBY GRANTED.

20 To the extent that any Findings of Fact are deemed Conclusions  
21 of Law, they are incorporated herein.

22 DATED: January 21, 2015



23  
24 HONORABLE MANUEL L. REAL  
25 United States District Judge

26 Presented by:

27 \_\_\_\_\_/s/\_\_\_\_\_  
28 LAWRENCE S. MIDDLETON  
Assistant United States Attorney